

TORTS I FINAL EXAMINATION
Professors Gilles and Kobil
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INSTRUCTIONS

1. *You will have **3 and 20 minutes** to complete the examination.*
2. *This is a **closed book examination**. You may not use any materials during the examination.*
3. *Make sure that you put your **examination number on all your greenbooks** and indicate the number of greenbooks you are turning in (e.g., 1 of 2). Please **write your examination number on this copy of the exam**. Place **all materials (scrap paper, this examination, and greenbooks)** back into your examination envelope. If you fail to turn in anything, your grade may be lowered.*
4. *This examination has two parts. Part One is worth **25% of this examination**, while Part Two is worth **the remaining 75%**. Part One consists of a fact pattern followed by one question (limit 3 pages). Part Two is a fact pattern followed by a second question (limit 9 pages). **Computer users** have 1,500 characters per page.*
5. ***You must adhere to the page limits given for each question. I will not read beyond the assigned page limit.** Write on only **ONE** side of the page, writing on **EVERY LINE** (You may double the page limit if you write on **EVERY OTHER** line). Only write on the lines; do not write in the margin. Of course, if you cross out several lines, you may use an equivalent amount of additional space.*
6. *Thoroughly discuss all the issues fairly raised by the question. For instance, even if you conclude that one element of a tort is not present, it may nonetheless be prudent to discuss the other elements. Do not make up any facts or statutes; rather, answer the question as asked.*
7. *This is a torts examination. Your (or my) personal opinions about the value of any of the activities described in the question are not responsive to the question.*

EXAM NO. _____

Good luck.

PART ONE--INTENTIONAL TORTS
(25% - Recommended time 1 hour)



Tossing the caber

THE TALE OF THE TORTIOUS CABER

It has been a cold and snowy winter at the Overlook Hotel, located high in the Doh Mountains of the State of Springfield. **Homer Simpson** and his family were vacationing at the nearly empty hotel when a blizzard dumped three feet of snow on the area. After the storm subsided, the Simpsons found that their beautiful pink automobile had been buried under an accumulation of snow. Homer was concerned that the car would be difficult to free and that the weight of the melting snow would soon crush it. He noticed a snow-blower in the hotel garage nearby. The blower was owned by the Overlook's Scottish handyman and groundskeeper, **Willie** (although Homer had no idea whose blower it was and could not find anyone at the hotel who knew).

Desperate to free his car, Homer took the blower from its place in the garage and had been using it for about four hours to clear away the snow when Willie appeared. Willie, who had paid \$1,000 for the deluxe blower, was furious to see Homer “messin’ with ma luvley blower.” He demanded that Homer immediately relinquish the blower, noting that “ah coulda rented it out for \$100 an hour!” Homer replied that he would be done with the blower in a few hours and would put it back in the garage at that time.

“What do ya take Willie for ?” responded the irate Scotsman, his veins and neck muscles bulging with anger. Spying a large telephone pole that had been downed by the blizzard, Willie picked it up, balanced it expertly (Willie was skilled at “tossing the caber,” a unique Scottish

“sport” involving throwing large logs in the air), and told Homer, “If you don’t put the blower back in the garage immediately, you’ll be wearing this wee toothpick as a bonnet!” Homer was unimpressed and continued to use the blower to clear snow from around his car.

Furious, Willie decided to teach Homer a lesson by tossing the telephone pole so that it would miss Homer by at least three feet, but still give him a good scare when he saw it flying toward him. (Because of his great skill with cabers, Willie knew the pole would fall harmlessly in the snow and that there was little chance that he would actually hit Homer). Unfortunately, as Willie launched the telephone pole into the air, he suffered a mild heart attack that caused his grip to slip. This altered the pole’s trajectory so that it was flying directly toward Homer.

“Look out mahn!” gasped Willie, clutching his chest. Homer looked up just in time to see the pole toppling toward him. It hit Homer a glancing blow on the head, fracturing his skull, and then landed squarely on Homer’s car, doing so much damage that the automobile was a total loss. The snow-blower was untouched, and after Homer and Willie had been taken to the hospital, it was returned to the garage.

Question 1 (Limit three pages). What intentional tort claims may be stated by Homer against Willie AND by Willie against Homer? Do not discuss any defenses.

PART TWO—NEGLIGENCE
(75%- Recommended time 2 hours and 20 minutes)

THE TALE OF FLYING CHRISTMAS TREE

Grandpa Simpson (“**Grandpa**”) drove out into the countryside to purchase a Christmas tree. Grandpa decided to surprise the grandkids by purchasing a large tree and picked out a 20-foot Scotch Pine. Grandpa, with assistance from three salesmen, lifted the tree on to the top of his car. Grandpa had not brought any rope, and rejected the salesman’s offer to sell him rope for a mere \$7.00 (despite the salesman’s representation that the rope was very strong, had always safely held even large trees, and only left small scratches on the car). Grandpa declined to buy the rope because he had already overspent his budget (paying \$200 for the tree), and he did not want to get rope scratches on his car. Grandpa, who had little understanding of basic physics (and indeed was of very low intelligence), figured that because the tree was heavy it would easily stay in place on top of the car without being tied down.

Grandpa carefully drove home along Muntz road (a seldom-traveled, country lane that curved along side the Springfield Gorge Park, a favorite haunt for climbers). Grandpa had gone about 3 miles, when he attempted to round a curve and the tree flew off the top of his car and landed on the road. “Doh,” Grandpa remarked to himself. He clambered out of the car and several times tried to move the tree off the road, but it was too heavy and unwieldy for him to shift alone. “I’ll just have to drive home and get some help,” he thought. So, leaving the tree in the middle of the road, Grandpa headed home.

Five minutes later, pilot **Snake** with his friend **Otto** flew by in a private plane. Snake and Otto ran an illegal immigration scheme smuggling aliens from Canada into America. They had ten passengers, all illegal aliens. However the INS had detected Snake and Otto’s scheme and an INS helicopter was in pursuit. Seeking to avoid capture, Snake decided to put the plane down on Muntz road. All was going well until Snake saw the tree lying on the darkened road. Snake swerved just in time, but the plane went off the road, slid fifty feet into the gorge, and ended up perched precipitously on a boulder halfway down the side of the cliff. Miraculously, neither Snake, Otto, nor the passengers were hurt.

However, after no help came for 20 minutes, Otto (who was an expert rock climber), wriggled out of the plane and began to climb up the side of the gorge in an effort to rescue the others. Although he was wearing flimsy sandals, Otto climbed about 20 feet and safely reached a ledge. Otto then turned to call out to Snake, but stepped backwards without looking. Otto stepped off the ledge and fell to the bottom of the gorge in Springfield Gorge Park, suffering multiple injuries.

When the police arrived, they rescued Snake and the other passengers, and rushed Otto to the hospital, where, sadly, he died. As the treating physician later explained, Otto’s years of drug abuse had left him in a precarious state, and while anyone else would have made a full recovery, Otto slipped into a coma and died.

The police also dragged the tree off the road, because there had been an increasing number of accidents in and around Springfield caused by debris and other garbage left strewn on the roads, and in about half of these collisions, the drivers, passengers or bystanders had suffered serious bodily injury.

In the aftermath of these events, Otto's estate ("**Otto**") filed an action for negligence against Grandpa.

In addition to your general knowledge of tort law, you should also know the following:

1. After several climbers had fallen to their deaths in Springfield Gorge Park, Springfield enacted the "Safe Climbers Act" which added a new provision to the Criminal Code. The Code now provides that: "It is a misdemeanor punishable by a fine of up to \$5,000 to engage in recreational climbing in the Springfield Gorge Park without mountaineering footwear."
2. Springfield has abolished all forms of assumption of the risk, and has adopted the following provision on plaintiff's fault:

Contributory negligence does not bar recovery in an action by any person or the person's legal representative to recover damages for negligence resulting in death or injury to persons or property, if that negligence was not greater than the negligence of the person against who recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributed to the person recovering.

Question 2 (Limit nine pages). Can Otto make out a negligence claim against Grandpa? Does Grandpa have any defenses? Even if you conclude that an element is not met, it would nonetheless be wise to discuss all elements of negligence, and any defenses.

THE END